IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

CRP.No. 2216 of 1999(A)

AGAINST THE ORDER DATED 12/10/1999 IN IA 2432/1999 IN OS.124/1998 of MUNSIFF COURT, KODUNGALLUR

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PETITIONERS/PETITIONERS/PLAINTIFFS:

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1. KOMALAM W/O.NJATTUVETTITHARAYIL NARAYANAN, MURIYAMTHODE DESOM, VALAPAD VILLAGE, CHOWGHAT TALUK.

2. UDAYAN, S/O. -DO-, -DO-, -DO-

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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1. LAKSHMANAN, S/O.THEKKUTTU GOVINDAN, KOTTAMKULAM DESOM, PERINJANAM VILLAGE, KODUNGALLUR TALUK.

2. THANKAM, W/O. THEKKUTTU LAKSHMANAN, -DO-, -DO-.

3. GOPINATHAN, S/O.THEKKUTTU LAKSHMANAN, -DO-, -DO-.

4. DEVAN, S/O.THEKKUTTU LAKSHMANAN, -DO-, -DO-.

5. UNNIKRISHNAN, S/O.THEKKUTTU LAKSHMANAN, -DO-, -DO-.

6. SUDHEER, S/O.THEKKUTTU LAKSHMANAN, -DO-, -DO-.

BY ADV. SRI.M.P.RAMNATH.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP No.2216 of 1999

CMP No.4573 of 1999 & 1221 OF 2000 IN CRP No.2216 of 1999

DISMISSED.

28.05.2007 SD/- PIUS C. KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE, J.

C.R.P No. 2216 OF 1999

Dated this the 28th day of May, 2007

O R D E R

The order passed by the Munsiff Court, Kodungalloor in IA No.2432 of 1999 which was an application for amendment of the plaint is under challenge by the plaintiff in this proceedings under Article 227 of the Constitution. The suit is for recovery of possession of the plaint schedule property from the defendant, who according to the plaintiff was entrusted with the property as agent and is retaining possession, notwithstanding the termination of the agency. In the plaint it was averred that the defendant had failed to render accounts for the income received from the property during the period of agency from 1959 onwards. A written statement was filed by the respondent contending that the title of the plaintiff if any over the property has been loosed to him by adverse possession and limitation. It was also contended that there was no agency at all as claimed by the plaintiff. The learned Munsiff dismissed the IA mainly on the reason that the amendment, if allowed will enable the plaintiff to get away from admissions in the original plaint which according to the Munsiff supports the plea of adverse possession set up by the respondent. Learned Munsiff has also observed that in the notice which was issued by the plaintiff prior to

his instituting the suit also it is not stated that the agency was terminated for not giving accounts from 1959 onwards. After hearing learned counsel Mr. K.G.Balasubramanian for the petitioner and Mr.M.P. Ramnath, learned counsel for the respondent for some time, I directed Mr.Balasubramanian to make available a copy of the lawyer's notice dt.03.11.97 which had been issued on behalf of the plaintiff. In that notice by which the agency has been terminated what is stated is that of late the respondent who is an agent is not giving accounts to the petitioner for the income received from the property. In other words, I do not find any admission in the notice dt.03.11.97 to the effect that from 1959 onwards the respondent has stopped accounting for the income from the property. Sri.M.P. Ramnath , counsel for the respondent would show me copy of the reply notice dt.17.11.97 wherein it is specifically contended that the claim of the petitioner regarding entrustment of the property on agency and the allegation that no accounting of income since recent times are untrue and that since 1959 the respondent is possessing the property adversely to the title if any of the petitioner. Mr.Ramnath submitted that it is in the light of the contentions raised in reply notice dt.17.11.97 that the plaintiff has consciously averred in the plaint that the respondent had not accounted for the income from 1959 onwards and the purpose of amendment is get away from the conscious

averments made in the plaint. The amendment if allowed will cause prejudice to the respondent and therefore is not liable to be allowed.

2. I cannot agree with the persuasive submissions of Mr.Ramnath. The copy of the plaint which was given to me will show that the lawyer's notice dt.03.11.97 as well as the reply dt.17.11.97 are produced respectively as item Nos. 2 and 4 in the list of documents appended to the plaint. Going by the pronouncement of this Court in **Commercial Financiers v.Thressia** [1990 (1) KLT 774] documents produced along with the plaint are to be treated as part of the plaint itself. In other words it is not a new case which the petitioner is trying to introduce by the proposed amendment.

3. Having regard to the principles governing exercise of power of amendment under Order VI Rule 17 as laid down by various judicial precedents, I am of the view that the application should have been allowed by the learned Munsiff at least on condition that the petitioner pays a sum of Rs.1,500/- to the respondent through his counsel in this Court and pays a further amount of Rs.5,500/- to the High Court legal Services Committee. Payment shall be made within two weeks of receiving copy of this order. Failing such payment the petition will stand dismissed. I set aside the impugned order dt. 12.10.99 and allow the IA, however, making it clear that it will be open to the respondent to take

advantage of admissions, if any made by the plaintiff in the unamended plaint, if the petitioner is unable to explain them away convincingly.

The Civil Revision Petition is allowed. No costs.

PIUS C. KURIAKOSE, JUDGE

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